



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2015-0699; FRL-9271-01-R5]

Air Plan Approval; Ohio; Partial Approval and Partial Disapproval of the Muskingum River SO₂ Nonattainment Area Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to partially approve and partially disapprove a revision to the Ohio State Implementation Plan (SIP) intended to provide for attaining the 2010 primary, health-based 1-hour sulfur dioxide (SO₂) national ambient air quality standard (NAAQS or "standard") for the Muskingum River SO₂ nonattainment area. This SIP revision (hereinafter referred to as Ohio's Muskingum River SO₂ attainment plan or plan) includes Ohio's attainment demonstration and other attainment planning elements required under the Clean Air Act (CAA). EPA is proposing to approve the base year emissions inventory and affirm that the nonattainment new source review requirements for the area have been met. EPA is proposing to disapprove the attainment plan, since the plan relies on, among other things, acquisition of a parcel of land by a facility, Globe Metallurgical (Globe), located within the nonattainment area. Globe has recently indicated to EPA and Ohio EPA that it will not be purchasing that parcel of land. Additionally, EPA is proposing to disapprove the plan for

failing to meet the requirements for meeting reasonable further progress (RFP) toward attainment of the NAAQS, reasonably available control measures/reasonably available control technology (RACM/RACT), emission limitations and control measures as necessary to attain the NAAQS, and contingency measures. Based on the change in circumstances since the original proposed action, EPA is now proposing a changed course of action.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2015-0699 at <https://www.regulations.gov>, or via email to arra.sarah@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional

submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Gina Harrison, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-6956, harrison.gina@epa.gov. The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19.

SUPPLEMENTARY INFORMATION:

I. What actions did EPA propose in this SIP submission?

On September 29, 2020¹, EPA proposed to approve Ohio's SO₂ plan for the Muskingum River area submitted on April 3, 2015 and October 13, 2015, and supplemented on June 23, 2020. EPA also proposed to approve and incorporate by reference Ohio EPA's Director's Final Findings and Orders issued to Globe on June 23, 2020 (DFFOs), including emission limits and associated compliance monitoring, recordkeeping, and reporting requirements. In addition, EPA proposed to approve the base year emissions inventory and to affirm that the new source

¹ 85 FR 60933 (September 29, 2020).

review requirements for the area had previously been met.

EPA's notice of proposed rulemaking provided an explanation of the provisions in the CAA and the measures and limitations identified in Ohio's attainment plan to satisfy these provisions. Ohio's plan was based on, among other things, the proposed acquisition by Globe of a tract of property to the north of the Globe facility that would have resulted in increased distance between the emissions source and the fenceline. EPA found that with the inclusion of this property within Globe's fenceline, Ohio's modeling results, based on modeling without receptors on fenced plant property and including the property proposed for purchase, were adequate to demonstrate that no ambient violations of the 1-hour SO₂ NAAQS would occur.

On June 1, 2021, EPA learned from Ohio EPA that Globe had decided not to purchase the land as anticipated by the attainment plan. As the attainment demonstration relied on the inclusion of this property within Globe's fenceline, failure to obtain the land renders the attainment demonstration invalid. Without a valid attainment demonstration, the proposed plan does not meet the requirements for meeting RFP toward attainment of the NAAQS, RACM/RACT, emission limitations and control measures as necessary to attain the NAAQS, and contingency measures. EPA indicated to Ohio EPA and to Globe that final action to disapprove the attainment demonstration would start sanctions and Federal implementation plan (FIP) clocks for this area under

CAA sections 179(a)-(b) and 110(c), respectively. EPA notes that approval of a revised attainment demonstration would remove the sanctions and FIP clocks, and such measures would be terminated by an EPA rulemaking approving a revised attainment demonstration.

II. What is EPA's response to comments received on the previous proposed rulemaking?

The proposed action described above provided a public comment period that closed on October 29, 2020. EPA received no relevant comments on the proposed action.

III. What action is EPA taking?

Based on the rationale set forth in the September 29, 2020 proposed rulemaking, EPA is proposing to approve the base year emissions inventory and affirming that the new source review requirements for the area have been met.

Because the area no longer has valid modeling showing attainment, EPA is proposing to disapprove Ohio's attainment demonstration for the Muskingum River SO₂ nonattainment area, including the DFFOs, as well as the requirements for meeting RFP toward attainment of the NAAQS, RACM/RACT, emission limitations and control measures as necessary to attain the NAAQS, and contingency measures. This disapproval will start sanctions clocks for this area under CAA section 179(a)-(b), including a requirement for 2-for-1 offsets for any major new sources or major modifications 18 months after the effective date of this action, and highway funding sanctions 6 months thereafter, as

well as initiate an obligation for EPA to promulgate a FIP within 24 months, under CAA section 110(c), unless in the meantime EPA has approved a plan that satisfies the requirements that EPA is finding unsatisfied.

IV. Statutory and Executive order reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action disapproves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations,
Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 17, 2021.

Cheryl Newton,
Deputy Regional Administrator, Region 5.
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